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MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

GENESIS COMPUTER SYSTEMS,
INC., a California corporation, and
SHAFAYAT DEWAN, an individual,

Defendants.

Case No. 8:17-cv-1416

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT**
(17 U.S.C. § 50)
- (2) **TRADEMARK INFRINGEMENT**
(17 U.S.C. § 1114)
- (3) **FALSE DESIGNATION OF
ORIGIN, ET AL.**
(15 U.S.C. § 1125)
- (4) **UNFAIR COMPETITION AND
FALSE ADVERTISING**
(15 U.S.C. § 1125)

1 Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against
 2 Defendants Genesis Computer Systems, Inc. (“Genesis”) and Shafayat Dewan
 3 (“Dewan”) (collectively “Defendants”) alleging as follows:

4 I. INTRODUCTION

5 1. This is an action for copyright infringement, trademark infringement,
 6 and false advertising activities. Defendants operate a computer reselling business.
 7 As part of this business’s operation, Defendants installed and activated (and
 8 attempted to activate) thousands of copies of unlicensed Microsoft software on a
 9 number of computer systems, which constitutes copyright and trademark
 10 infringement (among other things). Defendants then marketed, sold and distributed
 11 those systems to customers who were unaware they were receiving pirated and
 12 unlicensed software, and were harmed by Defendants’ misconduct.

13 II. PARTIES

14 2. Microsoft is a Washington corporation with its principal place of
 15 business in Redmond, Washington. Microsoft develops, markets, distributes, and
 16 licenses computer software, among other products and services.

17 3. Defendant Genesis Computer Systems, Inc. is a California corporation
 18 with its principal place of business in Anaheim, California. Genesis describes itself
 19 as a “system integrator and a value added re-seller” of computer hardware and
 20 software. It also claims to be a re-seller of “major brands” including Microsoft. On
 21 information and belief, Genesis was in possession or control of the Internet Protocol
 22 (“IP”) addresses 64.173.244.84 and 64.173.244.85 (“IP Addresses”) during various
 23 times relevant to this Complaint. Genesis used the IP Addresses in furtherance of
 24 the unlawful conduct alleged herein.

25 4. Defendant Shafayat Dewan is an individual who resides in Anaheim,
 26 California. Dewan is the founder, president, and CEO of Genesis, and owns,
 27 operates, supervises, and/or controls its conduct and business. On information and
 28 belief, Dewan (a) personally participated in and/or (b) had the right and ability to

1 supervise, direct, and control the wrongful conduct alleged in this Complaint, and
 2 derived a direct financial benefit from that wrongful conduct.

3 **III. JURISDICTION & VENUE**

4 5. The Court has subject matter jurisdiction over Microsoft's claims for
 5 copyright and trademark infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C.
 6 § 501, and 28 U.S.C. §§ 1331 and 1338(a).

7 6. The Court has personal jurisdiction over Defendants because each
 8 resides in the District, conducts business in the District and a substantial part of
 9 Defendants' actions giving rise to this suit occurred in the District.

10 7. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) and 28
 11 U.S.C. § 1391(a) because defendants reside in the District, and 28 U.S.C. § 1391(b)
 12 because a substantial part of the events giving rise to this suit occurred in the District.

13 **IV. FACTS COMMON TO ALL CLAIMS**

14 **A. The Global Problem of Software Piracy**

15 8. Software developers lose billions of dollars in annual revenue from
 16 software piracy, namely, the unauthorized and unlawful copying, downloading, and
 17 distributing of copyrighted and trademarked software and related components. In
 18 2015, the commercial value of pirated software in the United States exceeded \$10
 19 billion.

20 9. One prominent form of software piracy is known as "hard-disk loading,"
 21 the unauthorized commercial copying and installation of infringing software on
 22 devices which are often sold in competition with, and often for lower prices than,
 23 devices pre-installed with legally licensed copies of software.

24 10. Software developers, like Microsoft, are not the only victims of software
 25 piracy. Consumers are also victims, as they are often deceived by distributors of
 26 pirated software who go to great lengths to make the software appear genuine. These
 27 customers may unwittingly expose themselves to security risks associated with the
 28 use of pirated software. *See Federal Bureau of Investigation, Consumer Alert:*

1 *Pirated Software May Contain Malware*, Aug. 1, 2013, at
 2 <https://www.fbi.gov/news/stories/pirated-software-may-contain-malware1> (noting
 3 the relatively greater risk that pirated software is infected with malicious software, or
 4 “malware,” which can be used to record keystrokes and thus capture sensitive
 5 information such as user names, passwords, and Social Security numbers).

6 **B. Microsoft’s Software and Intellectual Property**

7 11. Microsoft develops, advertises, markets, distributes, and licenses a
 8 number of computer software programs. Microsoft’s software programs are recorded
 9 on distributable media, such as DVDs, or are made available for download through
 10 various authorized distribution channels.

11 12. **Windows 7:** Microsoft has developed, advertises, markets, distributes,
 12 and licenses a computer operating system called Microsoft Windows 7 (“Windows
 13 7”). Windows 7 is available in a number of different versions including Windows 7
 14 Ultimate, Windows 7 Professional, Windows 7 Home Premium, and Windows 7
 15 Enterprise. Microsoft holds a valid copyright in Windows 7 Ultimate, the most
 16 expansive version of Windows 7. As a result, Microsoft’s copyright in Windows 7
 17 Ultimate encompasses all other versions of Windows 7. Microsoft’s copyright in
 18 Windows 7 Ultimate was duly and properly registered with the United States
 19 Copyright Office. A true and correct copy of the Registration Certificate for
 20 Microsoft Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as
 21 Exhibit 1.

22 13. **Windows 8:** Microsoft has developed, advertises, markets, distributes,
 23 and licenses a computer operating system called Microsoft Windows 8 (“Windows
 24 8”). Windows 8 is available in a number of different versions, each of which includes
 25 certain combinations of products, programs, and features. Versions of Windows 8
 26 include Windows 8, Windows 8 Professional, and Windows 8 RT. Microsoft holds a
 27 valid copyright in Windows 8 Professional, the most expansive version of Windows
 28 8. As a result, Microsoft’s copyright in Windows 8 Professional encompasses all

1 other versions of Windows 8. Microsoft's copyright in Windows 8 Professional was
 2 duly and properly registered with the United States Copyright Office. A true and
 3 correct copy of the Registration Certificate for Microsoft Windows 8 Professional,
 4 bearing the number TX 7-601-008, is attached as Exhibit 2.

5 14. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes,
 6 and licenses a computer operating system called Microsoft Windows 8.1 ("Windows
 7 8.1"). Windows 8.1 is available in a number of different versions, each of which
 8 includes certain combinations of products, programs, and features. Versions of
 9 Windows 8.1 include Windows 8.1, Windows 8.1 Professional, and Windows 8.1
 10 Enterprise. Microsoft holds a valid copyright in Windows 8.1 Professional, the most
 11 expansive version of Windows 8.1. As a result, Microsoft's copyright in Windows
 12 8.1 Professional encompasses all other versions of Windows 8.1. Microsoft's
 13 copyright in Windows 8.1 Professional was duly and properly registered with the
 14 United States Copyright Office. A true and correct copy of the Registration
 15 Certificate for Microsoft Windows 8.1 Professional, bearing the number TX 7-740-
 16 672, is attached as Exhibit 3.

17 15. **Windows 10:** Microsoft has developed, advertises, markets, distributes,
 18 and licenses a computer operating system called Microsoft Windows 10 ("Windows
 19 10"). Windows 10 is available in a number of different versions, each of which
 20 includes certain combinations of products, programs, and features. Versions of
 21 Windows 10 include Windows 10 and Windows 10 Professional. Microsoft holds a
 22 valid copyright in Windows 10 Professional, the most expansive version of Windows
 23 10. As a result, Microsoft's copyright in Windows 10 Professional encompasses all
 24 other versions of Windows 10. Microsoft's copyright in Windows 10 Professional
 25 was duly and properly registered with the United States Copyright Office. A true and
 26 correct copy of the Registration Certificate for Microsoft Windows 10 Professional,
 27 bearing the number TX 8-058-526, is attached as Exhibit 4.
 28

16. **Windows Server 2008:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating system called Windows Server 2008. Windows Server 2008 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2008 include Server Essentials 2008, Server Standard 2008, Server Standard 2008 R2, Server Enterprise 2008, Server Datacenter 2008, and Server Datacenter 2008 R2. Microsoft holds a valid copyright in Windows Server 2008, which encompasses all versions of Windows Server 2008. Microsoft's copyright in Windows Server 2008 was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Server 2008, bearing the number TX 6-880-740, is attached as Exhibit 5.

17. **Windows Server 2012:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating system called Windows Server 2012. Windows Server 2012 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2012 include Windows Server Standard 2012 R2, Windows Server Standard 2012, Windows Web Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid copyright in Windows Server 2012, which encompasses all versions of Windows Server 2012. Microsoft's copyright in Windows Server was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Server 2012, bearing the number TX 7-622-123, is attached as Exhibit 6.

18. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a suite of productivity software for business, home, and educational use called Microsoft Office 2010 ("Office 2010"). Office 2010 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2010 include Office 2010 Professional, Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010

1 Home and Student. Microsoft holds a valid copyright in Office 2010 Professional
 2 Plus, the most expansive version of Office 2010. As a result, Microsoft's copyright in
 3 Office 2010 Professional Plus encompasses all other versions of Office 2010.
 4 Microsoft's copyright in Office 2010 Professional Plus was duly and properly
 5 registered with the United States Copyright Office. A true and correct copy of the
 6 Registration Certificate for Office 2010 Professional Plus, bearing the number TX 7-
 7 151-840, is attached as Exhibit 7.

8 **19. Office 2013:** Microsoft has developed, advertises, markets, distributes,
 9 and licenses a suite of productivity software for business, home, and educational use
 10 called Microsoft Office 2013 ("Office 2013"). Office 2013 is available in a number
 11 of different versions, each of which includes certain combinations of products,
 12 programs, and features. Versions of Office 2013 include Office 2013 Professional,
 13 Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft
 14 holds a valid copyright in Office 2013 Professional Plus, the most expansive version
 15 of Office 2013. As a result, Microsoft's copyright in Office 2013 Professional
 16 encompasses all other versions of Office 2013. Microsoft's copyright in Office 2013
 17 Professional was duly and properly registered with the United States Copyright
 18 Office. A true and correct copy of the Registration Certificate for Office 2013
 19 Professional, bearing the number TX 7-649-882, is attached as Exhibit 8.

20 **20. Microsoft Office 365:** Microsoft has developed, advertises, markets,
 21 distributes, and licenses a suite of productivity software for business, home, and
 22 educational use called Microsoft Office 365 ("Office 365"). Office 365 is available
 23 in a number of different versions, each of which includes certain combinations of
 24 products, programs, and features. Versions of Office 365 include, but are not limited
 25 to, Office 365 Business, Office 365 Business Essentials, Office 365 Business
 26 Premium, Office 365 ProPlus, Office 365 Enterprise E1, Office 365 Enterprise E3,
 27 Office 365 Enterprise E5, Office Professional 2016, Office Professional Home and
 28 Business 2016, Office Home and Business 2016, Office Home and Student 2016, and

Office Professional Plus 2016. Microsoft holds a valid copyright in Office 365 ProPlus 2016, the most expansive version of Office 365, and this copyright encompasses all versions of Office 365, including Office Professional 2016. Microsoft's copyright in Office 365 ProPlus 2016 was duly and properly registered with the United States Copyright Office, bearing the number TX 8-097-602, and is attached hereto as Exhibit 9.

21. **Visio 2013:** Microsoft has developed, advertises, markets, distributes, and licenses a software application used for diagramming and vector graphics called Microsoft Visio 2013 ("Visio 2013"). Visio 2013 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Visio 2013 include, but are not limited to, Visio Premium 2013, Visio Professional 2013, and Visio Standard 2013. Microsoft holds a valid copyright in Visio Professional 2013, the most expansive version of Visio 2013, and this copyright encompasses all versions of Visio 2013. Microsoft's copyright in Visio Professional 2013 was duly and properly registered with the United States Copyright Office, bearing the number TX 7-751-909, and is attached hereto as Exhibit 10.

22. Microsoft has also duly and properly registered a number of trademarks and service marks in the United States Patent and Trademark Office on the Principal Register, including without limitation:

- (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for computer software;
- (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for computer software;

- (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer productivity software;
- (f) "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299, for computer productivity software;
- (g) "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826, for computer productivity software;
- (h) "ACCESS," Trademark Registration No. 3,238,869, for computer database management software;
- (i) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for computer database management software;
- (j) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,365,955 for computer database management software;
- (k) "CAMERA TILE," Trademark Registration No. 4,415,986 for computer software for accessing and managing camera functions;
- (l) "CHARM BAR," Trademark Registration No. 4,489,348 for computer software operating system;
- (m) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet software;
- (n) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558 for computer spreadsheet software;
- (o) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451 for computer spreadsheet software;
- (p) "GAMES TILE," Trademark Registration No. 4,444,995 for computer software enabling access to online games;
- (q) "MAPS TILE," Trademark Registration No. 4,415,985 for computer software for mapping and directions;
- (r) "MESSAGING TILE," Trademark Registration No. 4,426,631 for computer software for text and multimedia messaging;

- (s) "MUSIC TILE," Trademark Registration No. 4,426,630 for computer software for downloading and listening to music and other audio content;
- (t) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for use in note taking;
- (u) "ONENOTE LAUNCH ICON 2010," Trademark Registration No. 3,905,559 for computer software for use in note taking;
- (v) "ONENOTE LAUNCH ICON 2012," Trademark Registration No. 4,351,584 for computer software for use in note taking;
- (w) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (x) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (y) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No. 4,355,446, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (z) "POWERPOINT," Trademark Registration No. 1,475,795, for computer software programs for creating presentations, graphics and videos;
- (aa) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No. 3,905,561, for computer software programs for creating presentations, graphics and videos;
- (bb) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No. 4,385,388, for computer software programs for creating presentations, graphics and videos;
- (cc) "PUBLISHER LAUNCH ICON," Trademark Registration No. 3,909,142 for desktop publishing software;
- (dd) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No. 4,355,448 for desktop publishing software;

(ee) "SPORTS TILE," Trademark Registration No. 4,426,632 for computer software for viewing information and content about sports;

(ff) "VIDEO TILE," Trademark Registration No. 4,412,218 for computer software for downloading and viewing video content;

(gg) "WINDOWS 8 PACKAGING," Trademark Registration No. 4,476,005, for computer operating system software;

(hh) "WINDOWS SERVER," Trademark Registration No. 3,056,149, for operating system, computer and utility programs;

(ii) "WINDOWS STORE TILE," Trademark Registration No. 4,552,497, for operating system software;

(jj) "WORD LAUNCH ICON 2010," Trademark Registration No. 3,909,143, for word processing software;

(kk) "WORD LAUNCH ICON 2012," Trademark Registration No. 4,355,444 for word processing software; and

(ll) "OFFICE 365," Trademark Registration No. 4,185,310 for computer productivity software.

True and correct copies of the Trademark Registrations for (a) through (oo) above are attached as Exhibits 11 through 48, respectively.

C. Microsoft's Distribution Channels for Software

23. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and refurbisher channels.

24. The Original Equipment Manufacturer ("OEM") distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, the Microsoft Windows operating system.

25. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are the Commercial OEM channel and the Direct OEM channel.

26. Through the Commercial OEM (“COEM”) channel, Microsoft-authorized distributors supply what is called “system builder” software to small and medium-sized OEMs for pre-installation on devices.

27. Through the Direct OEM (“DOEM”) channel, Microsoft directly provides software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on devices. The DOEMs acquire some components associated with the Microsoft software from Microsoft Authorized Replicators (“ARs”).

28. In addition to the OEM channel, Microsoft offers a number of subscription programs through which it provides software to qualified subscribers. One example of a subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals and entities that develop third-party software compatible with Microsoft software. MSDN subscribers are able to download certain Microsoft software directly from Microsoft.

29. Microsoft also offers Volume Licensing (“VL”) programs for its business customers. Through the VL program, customers purchase licenses for their software and can add, remove, and upgrade their software as their business needs evolve.

D. Product Activation

30. Like many other software developers, Microsoft has implemented a wide-range of technologies and programs to protect its customers and combat theft and infringement of its intellectual property. One of these is Microsoft’s product activation system, which involves the activation of software through product keys.

31. A Microsoft product key is a 25-character alphanumeric string generated by Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install Microsoft software on a device, they must enter a product key. Then,

1 as part of the activation process, customers and, in some cases, OEMs voluntarily
 2 contact Microsoft's activation servers over the Internet and transmit their product
 3 keys and other technical information about their device to the activation servers. The
 4 majority of the activations involved in this matter contacted servers that are
 5 physically located in Washington.

6 32. The activation process is analogous to the activation of credit cards or
 7 mobile phones with a code provided by the financial institution or the mobile carrier.
 8 Because Microsoft's copyrighted software is capable of being installed on an
 9 unlimited number of computers, Microsoft relies on the product activation process to
 10 detect piracy and protect consumers from the risks of non-genuine software.

11 33. In the OEM channel, each copy of genuine Microsoft Office 2016,
 12 Office 2010, Office 2013, Visio 2013, Windows 10, Windows 8, Windows 8.1,
 13 Windows 7, Windows Server 2008, and Windows Server 2012, software is
 14 distributed with a product key unique to that copy of the software—thus, for
 15 example, if a customer purchases ten copies of Windows 7, the customer is supplied
 16 with ten unique product keys. For Microsoft's subscription and VL programs,
 17 customers are normally supplied a single product key for each version of Microsoft
 18 software they license. For example, subscription and volume licensing customers
 19 receive one reusable product key for all Office 2010 Professional licenses authorized
 20 under their agreements to install and activate all copies.

21 34. Product activation works differently in the COEM and DOEM channels.
 22 COEMs use individual product keys to install and, in some cases, activate the
 23 software on the devices. DOEMs, on the other hand, either use a master key or a
 24 separate file generated from Microsoft to install Windows software on each device.

25 **E. Microsoft's Use of Cyberforensics to Combat Piracy**

26 35. In order to combat the global threat of software piracy of its software,
 27 Microsoft relies on investigative methods that leverage state-of-the-art technology to
 28 detect software piracy. Microsoft refers to these methods as "cyberforensics."

1 36. As part of its cyberforensic methods, Microsoft analyzes activation data
2 voluntarily provided by users when they activate Microsoft software, including the IP
3 address from which a given product is activated. An IP address is a numerical
4 identifier used to uniquely identify an internet-capable device when the device is
5 connected to the Internet. An IP address is ordinarily assigned to an internet user
6 (whether an individual or an entity) by the user's Internet Service Provider ("ISP").

7 37. Entities charged with managing and administering internet numbering
8 resources, including IP addresses, publish information about IP address assignment
9 and registration in publicly-searchable databases. Akin to an IP address "phone
10 book," these databases can be used to associate each IP address with the individual or
11 entity assigned to use that address. In some cases, the listed individual or entity is
12 actually using the IP address; in other cases, the listed individual or entity is an ISP
13 who has assigned the IP address to one of its customers. Thus, in some instances, the
14 identity of the individual or entity associated with a particular IP address is publicly
15 available; in other instances, the identity of the individual or entity can only be
16 obtained from the ISP assigned to that IP address.

17 38. Cyberforensics allows Microsoft to analyze billions of activations of
18 Microsoft software and identify activation patterns and characteristics that make it
19 more likely than not that the IP address associated with the activations is an address
20 through which pirated software is being activated.

21 **F. Defendants' Infringing Conduct**

22 39. Microsoft's cyberforensics have identified nearly four thousand
23 activations of Microsoft software originating from IP addresses 64.173.244.84 and
24 64.173.244.85, which were assigned to Genesis during the relevant time period
25 alleged in this Complaint, and which, on information and belief, were being used by
26 the Defendants in furtherance of the unlawful conduct alleged herein. A meaningful
27 volume of these activations have characteristics that, on information and belief,
28

1 demonstrate that Defendants were using the IP Addresses to activate pirated
2 software.

3 40. On information and belief, Defendants have activated and attempted to
4 activate copies of Microsoft Office 2016, Office 2010, Office 2013, Visio 2013,
5 Windows 10, Windows 8, Windows 8.1, Windows 7, Windows Server 2008, and
6 Windows Server 2012 with product keys that have one or more of the following
7 characteristics:

- 8 a. Product keys used more times than is authorized by the applicable
9 software license;
- 10 b. Subscription program keys used in a manner that is not authorized by
11 the applicable license (such as product keys intended for educational
12 institutions used by commercial entities); or
- 13 c. Product keys used to activate software outside of the region for
14 which it was intended.

15 41. On information and belief, each of these activations and attempted
16 activations constitutes the unauthorized copying of Microsoft software, in violation
17 of Microsoft's software licenses and its intellectual property rights.

18 42. On information and belief, Defendants have been and continue to be
19 involved in installing counterfeit and infringing copies of Microsoft's software
20 and/or related components.

21 43. On information and belief, Defendants have committed and continue to
22 commit acts of copyright and trademark infringement against Microsoft. On
23 information and belief, at a minimum, Defendants acted with willful blindness to, or
24 in reckless disregard of, Microsoft's registered copyrights, trademarks, and service
25 mark.

V. CAUSES OF ACTION

First Claim

Copyright Infringement — 17 U.S.C. § 501 *et seq.*

44. Microsoft incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

45. Microsoft is the sole owner of Microsoft Office 365, Office 2010, Office 2013, Visio 2013, Windows 10, Windows 8.1, Windows 8, Windows 7, Windows Server 2008, and Windows Server 2012, and of the corresponding copyrights and Certificates of Registration with the registration numbers listed above.

46. Defendants have infringed Microsoft's copyrights by reproducing Microsoft software in the United States of America without approval or authorization from Microsoft.

47. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights.

48. Dewan personally participated in and/or had the right and ability to supervise, direct, and control the wrongful conduct alleged in Microsoft's First Claim, and derived a direct financial benefit from that wrongful conduct. Dewan is, therefore, subject to liability for the wrongful conduct alleged herein based on his direct acts or under principles of secondary liability, including, without limitation, respondeat superior, vicarious liability, and/or contributory infringement.

49. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages and Defendants' profits attributable to the infringement. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

50. The award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

51. Microsoft is further entitled to injunctive relief and an order impounding all infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's copyrights are unique

1 and valuable property which have no readily determinable market value;
2 (b) Defendants' infringement harms Microsoft such that Microsoft could not be made
3 whole by any monetary award; and (c) Defendants' wrongful conduct, and the
4 resulting damage to Microsoft, is continuing.

5 **Second Claim**

6 **Trademark Infringement — 15 U.S.C. § 1114**

7 52. Microsoft incorporates by reference the allegations of each and all of the
8 preceding paragraphs as though set forth herein.

9 53. Defendants' activities constitute infringement of Microsoft's federally
10 registered trademarks and service marks with the registration numbers listed above.

11 54. Microsoft advertises, markets, distributes, and licenses its software and
12 related components under the trademarks and service marks described above and
13 uses these trademarks and service mark to distinguish Microsoft's products from the
14 software and related items of others in the same or related fields.

15 55. Because of Microsoft's long, continuous, and exclusive use of these
16 trademarks and service marks, they have come to mean, and are understood by
17 customers, end users, and the public to signify, software programs and related
18 components or services of Microsoft.

19 56. The infringing materials that Defendants have and are continuing to
20 install are likely to cause confusion, mistake, or deception as to their source, origin,
21 or authenticity.

22 57. Further, Defendants' activities are likely to lead the public to conclude,
23 incorrectly, that the infringing materials that Defendants are installing originate with
24 or are authorized by Microsoft, thereby harming Microsoft, its licensees, and the
25 public.

26 58. At a minimum, Defendants acted with willful blindness to, or in reckless
27 disregard of, Microsoft's registered marks.
28

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59. Dewan personally participated in and/or had the right and ability to supervise, direct, and control the wrongful conduct alleged Microsoft's Second Claim, and derived a direct financial benefit from that wrongful conduct. Dewan is, therefore, subject to liability for the wrongful conduct alleged herein based on his direct acts or under principles of secondary liability, including, without limitation, respondeat superior, vicarious liability, and/or contributory infringement.

60. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits attributable to the infringement, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c).

61. Microsoft is further entitled to injunctive relief and an order compelling the impounding of all infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's trademarks and service mark are unique and valuable property that have no readily determinable market value; (b) Defendants' infringement constitutes harm to Microsoft's reputation and goodwill such that Microsoft could not be made whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials; and (d) Defendants' wrongful conduct, and the resulting harm to Microsoft, is continuing.

Third Claim
False Designation of Origin, False Description and Representation of Microsoft Visual Designs — 15 U.S.C. § 1125

62. Microsoft incorporates by reference the allegations of each and all of the preceding paragraphs as though set forth herein.

63. Microsoft advertises, markets, distributes, and licenses its software and related components under the trademarks and service marks described above, and uses these trademarks and service marks to distinguish Microsoft's software and

1 related components from the software or products of others in the same field or
2 related fields.

3 64. Because of Microsoft's long, continuous, and exclusive use of these
4 trademarks and service marks, they have come to mean, and are understood by
5 customers, end users, and the public to signify, software or services of Microsoft.

6 65. Microsoft has also designed distinctive and aesthetically pleasing
7 displays, logos, icons, and graphic images (collectively, "Microsoft visual designs")
8 for its software programs and related components.

9 66. On information and belief, Defendants' wrongful conduct includes the
10 use of Microsoft's marks, name, and/or imitation of visual designs (specifically
11 displays, logos, icons, and/or graphic designs virtually indistinguishable from
12 Microsoft visual designs) in connection with their goods and services.

13 67. Upon information and belief, Defendants' wrongful conduct misleads
14 and confuses their customers and the public as to the origin and authenticity of the
15 goods and services advertised, marketed, installed, offered or distributed in
16 connection with Microsoft's marks, name, and imitation visual designs, and
17 wrongfully trades upon Microsoft's goodwill and business reputation. Defendants'
18 conduct constitutes (a) false designation of origin, (b) false or misleading description,
19 and (c) false or misleading representation that the imitation visual images originate
20 from or are authorized by Microsoft, all in violation of Section 43(a) of the Lanham
21 Act, 15 U.S.C. § 1125(a).

22 68. As a result of Defendants' wrongful conduct, Microsoft is entitled to
23 recover its actual damages, Defendants' profits, and treble damages and attorney fees
24 pursuant to 15 U.S.C. § 1117.

25 69. Further, Microsoft is entitled to injunctive relief and to an order
26 compelling the impounding of all imitation marks and visual designs being used,
27 advertised, marketed, installed, offered or distributed by Defendants. Microsoft has
28 no adequate remedy at law for Defendants' wrongful conduct because, among other

things: (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

Fourth Claim

Unfair Competition and False Advertising — 15 U.S.C. § 1125

70. Defendants have made false and misleading representations and descriptions of fact in connection with the offering for sale and sale of unlicensed Microsoft software, including without limitation, that Defendants are offering licensed Microsoft software.

71. Defendants' false and misleading representations and descriptions of fact were made in commercial advertising or promotion, including without limitation, in connection with the offering for sale and sale of unlicensed Microsoft software through their websites.

72. Defendants' false and misleading representations and descriptions of fact misrepresent the nature, characteristics, qualities, or origin of their goods, services, and commercial activities.

73. Defendants' use of Microsoft's copyrights and trademarks referenced above and its false and misleading representations and descriptions of fact in interstate commerce in connection with its offering for sale of unlicensed Microsoft software has either deceived or has the capacity to deceive a substantial segment of potential consumers, and such deception is material, in that it is likely to influence the consumers' purchasing decisions.

74. Defendants have used, and continue to use, Microsoft's copyrights and trademarks referenced above to compete unfairly with Microsoft and to deceive

1 customers.

2 75. Defendants' conduct constitutes false advertising and federal unfair
3 competition, in violation of 15 U.S.C. § 1125(a).

4 76. Defendants' wrongful conduct is likely to continue unless restrained and
5 enjoined.

6 77. As a result of Defendants' wrongful conduct, Microsoft is entitled to
7 recover its actual damages, Defendants' profits, and treble damages and attorney fees
8 pursuant to 15 U.S.C. § 1117.

9 78. Further, Microsoft is entitled to injunctive relief and to an order
10 directing Defendants to stop representing or implying that they are offering licensed
11 Microsoft software. Microsoft has no adequate remedy at law for Defendants'
12 wrongful conduct because, among other things: (a) Defendants' advertising,
13 marketing, installation, or distribution of unlicensed Microsoft software constitutes
14 harm to Microsoft such that Microsoft could not be made whole by any monetary
15 award; and (b) Defendants' wrongful conduct, and the resulting damage to Microsoft,
16 is continuing.

17 18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Microsoft respectfully prays for the following relief:

20 A. That the Court enter judgment in Microsoft's favor on all claims;

21 B. That the Court restrain and enjoin Defendants, their directors, principals,
22 officers, agents, representatives, employees, attorneys, successors and assigns, and all
23 others in active concert or participation with them, from:

24 (i) copying or making any other infringing use or infringing
25 distribution of Microsoft's software and other intellectual property including but not
26 limited to the software identified by the Trademark, Service Mark, and Copyright
27 Registration Numbers listed above;
28

(ii) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(iii) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, or copyright including, but not limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software, component, and/or other item not authorized or licensed by Microsoft;

(iv) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights; and

(v) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above;

C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft software and/or materials bearing any of Microsoft's trademarks or service mark, and any related item, including business records, that are in Defendants' possession or under their control;

D. That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Microsoft, the illegal profits obtained from their distribution of counterfeit and infringing copies of Microsoft's software, and

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1 requiring Defendants to provide Microsoft a full and complete accounting of all
2 amounts due and owing to Microsoft as a result of Defendants' unlawful activities;

3 E. That Defendants be required to pay all general, special, actual, and
4 statutory damages which Microsoft has sustained, or will sustain, as a consequence
5 of Defendants' unlawful acts, and that such damages be enhanced, doubled, or
6 trebled as provided for by 17 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

7 F. That Defendants be required to pay to Microsoft both the costs of this
8 action and the reasonable attorneys' fees incurred by Microsoft in prosecuting this
9 action, as provided for by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

10 G. That the Court grant Microsoft such other, further, and additional relief
11 as the Court deems just and equitable.
12

13 DATED: August 17, 2017

DAVIS WRIGHT TREMAINE LLP
BONNIE E. MACNAUGHTON
ANNA R. BUONO
JAMES H. WENDELL

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